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May 1, 2019

Via ECF

Hon. Magistrate Judge Robert M. Levy
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: Jean Francsique vs. Clifford B. Finkler, Jr Inc. and Valmore E. Strachan
Docket No.: 16-CV-3637 (KAM)(RML)
Our File No.: SMY15-017

**Letter motion to appoint Guardian *ad litem* and for permission to have
Guardian *ad litem* appear at the mediation in place and stead of the recently
incapacitated Plaintiff and/or to adjourn tomorrow's conference to a later
date of this Court's choosing pending the appointment of a Guardian *ad
litem***

Honorable Magistrate Judge Levy,

Our office represents the plaintiffs in the above-referenced lawsuit.

Plaintiff makes the instant application to adjourn tomorrow's conference and mediation. Plaintiff also makes the instant application for an Order appointing a Guardian *ad litem* for the Plaintiff pursuant to Fed. R. Civ. P. 17(c)(2). Pursuant to the Order of the Honorable Magistrate Judge Levy dated March 1, 2019, the Plaintiff was to be present at the conference scheduled for May 2, 2019. In light of the Plaintiff's incapacitation, Plaintiff also seeks permission to have the appointed Guardian *ad litem* be present at for the May 2, 2019 conference in place and stead of the recently incapacitated Plaintiff.

On or about April 2, 2019, I met with the Plaintiff's wife, Mrs. Carmelle Gladys Francsique, and daughter who informed me that the Plaintiff, Mr. Jean Francsique, had suffered from a stroke in February 2019. Plaintiff's counsel then requested medical records and a letter from the Plaintiff's doctor regarding the stroke. On or about April 18, 2019, Plaintiff's counsel

obtained a correspondence dated April 3, 2019 from Dr. Berhane Wubshet, M.D. with accompanying medical records. In the letter, Dr. Wubshet states that Mr. Francisque has been admitted to Kingsbrook Jewish Medical Center/Rutland Nursing Home since March 6, 2019 with no plan for discharge. Furthermore, Dr. Wubshet states that, due to his medical condition, Mr. Francisque is unable to make any medical and financial decisions at this time and all of his needs are anticipated by Mr. Francisque's wife, Mrs. Gladys Francisque, and the medical staff. Furthermore, a review of the medical records reveals that Mr. Francisque suffered from a stroke on or before February 7, 2019. A copy of Plaintiff's medical records and April 3, 2019 correspondence from Dr. Berhane Wubshet, M.D. is annexed herein as **Exhibit "A"**.

As such, given the medical documentation from Plaintiff's physician regarding his incapacitation, it is apparent that a Guardian *ad litem* must be appointed to represent Mr. Francisque. See Bowen v. Rubin, 213 F.Supp.2d 220 (E.D.N.Y. 2001). Pursuant to Fed. R. Civ. P. Rule 17(c)(2), "The court must appoint a guardian ad litem – or issue another appropriate order – to protect a minor or incompetent person who is unrepresented in an action". Furthermore, Plaintiff respectfully requests that Plaintiff's wife, Mrs. Carmelle Gladys Francisque, be appointed as the Guardian *ad litem* to represent Mr. Francisque in this lawsuit.

In light of the foregoing, Plaintiff's counsel requests that tomorrow's conference and mediation be adjourned to a later date pending the appointment of a Guardian *ad litem* to represent the Plaintiff.¹ Plaintiff's counsel has spoken to Mrs. Carmelle Gladys Francisque and Mrs. Francisque has advised that she will be able to appear in Court tomorrow should her presence be necessary.

No prior application for the relief requested herein was made to this or any other Court of competent jurisdiction.

Yours, etc.,
WILLIAM SCHWITZER
& ASSOCIATES, P.C.

/S/ Albert K. Kim
Albert K. Kim (AK4840)
Attorneys for Plaintiff

CC:

Counsel for all parties via ECF.

¹ Plaintiff's request for an adjournment of tomorrow's conference and mediation is being made with the consent of all parties.